IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.489 OF 1996
IN
CHAMBER SUMMONS 1107 OF 1995
IN
SUIT NO.3536 OF 1991

The Industrial Credit & Investment Corporation of India Ltd., a Public Limited Company incorporated under the Indian Companies Act, VII of 1913 and having its registered office at 163, Backbay Reclamation, Bombay - 400 020 .. Appellant.

V/s.

1. Radha Silk Mills Limited, a company incorporated under the Companies Act, 1956 having its Registered Office at 5, Badrikeshwar, 82, Marine Drive, Bombay - 2.

2. Canara Bank, a body incorporated under the Banking Companies (Acquisition & Transfer of Undertakings) Act 1970 having its Head Office at Canara Bank Building, 112, Jayachamarajendra Road, Bangalore 560 002, and its Bombay Circle Office at Maker Towers "E", 13th and 14th Floors, Cuffe Parade, Plot No.85, Colaba, Bombay - 5.

3. Maharashtra State Financial Corporation, a corporation constituted under the State Financial Corporation Act, having its office at New Excellcior Building, Amrit Keshav Nayak Marg, Fort, Bombay - 400 001. .. Respondents.

Mr.Chetan Kapadia i/b. M/s. M.K. Ambalal & Co. for the appellant.

Ms.K.V. Gautan, Dy. Official Liquidator present.

**CORAM : R.M. LODHA &**
**J.P. DEVADHAR, JJ.**

**DATED : 19TH JULY, 2005.**

**ORAL JUDGMENT (Per R.M. Lodha, J.) :**

This appeal is directed against the order dated March 15, 1996 passed by the learned Chamber Judge whereby it is held that on first defendant making payment of Rs.2,85,000/- with further interest thereon at the rate of 18% per annum till the date of payment, the decree dated January 6, 1994 passed in the suit shall stand marked fully satisfied.

2. Bereft of unnecessary details, suffice it to say that the present appellant (original plaintiff) granted foreign currency loan to the first respondent (first defendant) on the terms and conditions contained in the agreement dated December 11, 1985 between the parties. The first defendant allegedly committed default and despite demands did not make payment to the plaintiff. That necessitated the plaintiff to file the suit for recovery of the amount and other ancillary reliefs against the first defendant.

3. Inter alia, prayer (a) in the plaint reads thus :

> "(a) that Defendant No.1 be ordered and decreed to pay to the Plaintiffs a sum of Rs.60,86,992.00 as per particulars of claim hereto annexed and marked Exhibit 'C' with further interest thereon at the rate of 18% per annum from the date of the suit till payment;"

4. On January 6, 1994 decree on admission was passed in favour of the plaintiff and against the first defendant. The said decree is thus :

> "1. Decree as prayed for in favour of the Plaintiffs and against the Defendant No.1 in terms of prayers (a) (inclusive of all costs, charges and expenses of the Court Receiver, High Court, Bombay as also the security charges, valuation charges incurred by the Plaintiffs(s), (b), (h) (i) and (n).
>
> 2. Decree to operate as charge on the immoveable properties set out in Exhibit "A" to the Plaint.
>
> 3. Decretal amount to be paid by Defendant No.1 to the Plaintiffs us the following manner :-
>
> Sum of Rs.5 Lakhs on or before 15th February, 1994.
> Sum of Rs.5 Lakhs on or before 15th March, 1994.
> Sum of Rs.5 Lakhs on or before 15th April, 1994
> Sum of Rs.5 Lakhs on or before 15th May, 1994.
> Sum of Rs.5 Lakhs on or before 15th June, 1994.
> Sum of Rs.5 Lakhs on or before 15th July, 1994.
> Sum of Rs.5 Lakhs on or before 15th August, 1994.
> Sum of Rs.5 Lakhs on or before 15th September, 1994.
> Sum of Rs.5 Lakhs on or before 15th October, 1994.
> Sum of Rs.5 Lakhs on or before 15th November, 1994.
> Sum of Rs.5 Lakhs on or before 15th

December, 1994.
Balance decretal amount as aforesaid to be paid in fully on or before 15th January, 1994.

4. In the event of default if any committed by the Defendant No.1 in making payment of the amounts as set out in Clause 3 hereinabove, the entire decretal amount then remaining due and payable will become due and payable forthwith and the Court Receiver, High Court, Bombay without any further order will sell the properties described in Exhibit "A", "B", "C" (save and except book-debts) to the Plaint and pay over the net sale proceeds thereof to the Plaintiffs towards payment of decretal amount. The Court Receiver in the first instance shall sell the property described firstly in the Schedule at Exhibit "A" to the Plaint and in the event of any difficulty in respect of the sale thereof, to sell the remaining properties in the same order.

5. Injunction Order in terms of prayer (l) to the Plaint till full payment of decretal amount as set out on hereinabove."

5. According to the first defendant, pursuant to the aforesaid decree on admission, the following payments were made.

"

| Date of payment | Amount |
|---|---|
| 10.02.1994 | 5,00,000/- |
| 08.03.1994 | 5,00,000/- |
| 31.03.1994 | 5,00,000/- |
| 20.04.1994 | 3,00,000/- |
| 26.04.1994 | 2,00,000/- |
| 15.08.1994 | 5,00,000/- |
| 07.07.1994 | 15,00,000/- |
| 07.09.1994 | 5,00,000/- |
| 22.09.1994 | 5,00,000/- |
| 05.10.1994 | 5,86,992/- |
| 25.10.1994 | 5,00,000/- |
| 30.11.1994 | 5,00,000/- |
| 25.01.1995 | 5,00,000/- |
| 20.03.1995 | 5,00,000/- |
| 09.06.1995 | 5,00,000/- |

| | |
|---|---|
| 16.06.1995 | 5,00,000/- |
| | ---------- |
| | 85,86,992/- |
| | ==========" |

6. The chamber summons was taken out by the plaintiff claiming therein that an amount of Rs.8,17,148/- or such other amount as may be determined by the Court, remains payable by the first defendant to the plaintiff and upon deposit of the said amount, the decree dated January 6, 1994 be marked satisfied.

7. The first defendant in response to the chamber summons submitted that the amount as per the decree has already been paid and the decree deserves to be marked satisfied. However, to cut short the controversy on the question of differential interest, the first defendant agreed that a sum of Rs.2,85,000/- would still be due and payable by the defendant and that payment they would make.

8. The learned chamber Judge passed the following order :

> "(i) On the 1st Defendant making payment of Rs.2,85,000/- with further interest thereon at the rate of 18% per annum from the date hereof till the date of payment, the decree dated 6th January, 1994 passed in the suit do stand marked fully satisfied.
>
> (ii) On the 1st Defendant making payment of the said sum of Rs.2,85,000/- and

> interest in terms of Clause (i) hereinabove, the Court Receiver, High Court, Bombay appointed Receiver do stand discharged without passing accounts but subject to payment of his costs, charges and expenses by the 1st Defendant and do refund to the 1st Defendant the balance of Rs.1,00,000/- lying deposited after deducting therefrom the amount of costs, charges and expenses as aforesaid as payable by the 1st Defendant.
>
> (iii) Receiver to act on the certified copy of the minutes of this Order. The Chamber Summons is accordingly disposed of."

9. The learned counsel for the appellant submitted before us as was submitted before the learned Chamber Judge that the plaintiff had reserved the right to claim the non rupee tied portion of the loan amount in foreign currency or equivalent Indian rupee to be calculated at the exchange rate prevalent at the time of payment thereof and, therefore, the plaintiffs are entitled to a sum of Rs.32,26,829/- based on conversion of foreign currency equivalent to Indian rupee at the exchange rate prevalent at the time of payment.

10. The Supreme Court in the case of Forasol V/s. Oil and Natural Gas Commission; AIR 1984 Supreme Court 241, in paragraph 70 of the report, held thus :

> "70. It would be convenient if we not set out the practice, which according to us, ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and

decreed by the court. It is unnecessary for us to categorize the cases in which such a claim can be made and decreed. They have been sufficiently indicated in the English decisions referred to by us above. Such instances can, however, never be exhausted because the law cannot afford to be static but must constantly develop and progress as the society to which it applies, changes its complexion and old ideologies and concepts are discarded and replaced by new. Suffice it to say that the case which which we are concerned was one which fell in this category. In such a suit, the plaintiff, who has not received the amount due to him in a foreign currency and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency. For this purpose, the plaintiff would have to convert the foreign currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or, at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount due to him. In either event, the valuation of the suit for the purposes of court-fees and the pecuniary limit of the jurisdiction of the court will be the amount in Indian currency claimed in the suit. The plaintiff may, however, choose the second course open to him and claim in foreign currency the amount due to him. In such a suit, the proper prayer for the plaintiff to make in his plaint would be for a decree that the defendant do pay to him the foreign currency sum claimed in the plaint subject to the permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted and that in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency

granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the defendant do pay to the plaintiff the rupee equivalent of the foreign currency sum claimed at the rate of exchange prevailing on the date of the judgment. For the purposes of court-fees and jurisdiction the plaintiff should, however, value his claim in the suit by converting the foreign currency sum claimed by him into Indian rupees at the rate of exchange prevailing on the date of the filing of the suit or the date nearest or most nearly preceding such date, stating in his plaint what such rate of exchange is. He should further give an undertaking in the plaint that he would make good the deficiency in the court-fees, if any, if at the date of the judgment, at the rate of exchange then prevailing the rupee equivalent of the foreign currency sum decreed is higher than that mentioned in the plaint for the purposes of court-fees and jurisdiction. At the hearing of such a suit, before passing that decree, the court should call upon the plaintiff to prove the rate of exchange prevailing on the date of the judgment or on the date nearest or most nearly preceding the date of the judgment. If necessary, after delivering judgment on all other issues, the court may stand over the rest of the judgment and the passing of the decree and adjourn the matter to enable the plaintiff to prove such rate of exchange. The decree to be passed by the court should be one which orders the defendant to pay to the plaintiff the foreign currency sum adjudged by the court subject to the requisite permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted, and in the event of the Foreign Exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the equivalent of such foreign currency sum converted into Indian rupees at the rate of exchange proved before the court as aforesaid. In the event of the decree being challenged in appeal or other proceedings

> and such appeal or other proceedings being decided in whole or in part in favour of the plaintiff, the appellate court or the court hearing the application in the other proceedings challenging the decree should follow the same procedure as the trial court for the purpose of ascertaining the rate of exchange prevailing on the date of its appellate decree or of its order on such application or the date nearest or most nearly preceding the date of such decree or order the rate of exchange is different from the rate in the decree which has been challenged, the court should make the necessary modification with respect to the rate of exchange by its appellate decree or final order. In all such cases, execution can only issue for the rupee equivalent specified in the decree, appellate decree or final order, as the case may be. These questions, of course, would not arise if pending appeal or other proceedings adopted by the defendant the decree has been executed or the money thereunder received by the plaintiff."

11. When we turn to the facts of the present case it clearly transpires that the plaintiff did convert the amount of foreign currency into Indian rupee at the time of filing of the suit. This is clear from prayer (a) of the plaint that we have noticed above. The decree itself has been passed in terms of Indian rupee. The particulars of claim on which much reliance has been placed by the learned counsel for the appellant wherein it is stated ‘equivalent amount in Rupees is calculated at Exchange Rate on 30.6.1991 of DM 8,4775/- Rs.100 which Rupee Equivalent is subject to further Exchange Rate fluctuations at the time of payment in terms of the Loan Agreement’ does not alter the position at

all. Prayer (a) clearly discloses the exercise of option by the plaintiff in converting the amount of foreign currency into Indian currency at the time of filing of the suit. The fluctuations in the exchange rate would not affect the plaintiff's specified claim in prayer (a). If the exchange rate had gone down, the plaintiff would not have returned the amount that was paid by the first defendant pursuant to the decree on admission dated January 6, 1994. Having exercised the option of converting the amount of foreign currency in Indian currency at the time of filing of the suit, it is not open to the plaintiff to claim the amount based on fluctuations in exchange rate. The stance of the plaintiff is unreasonable and inconsistent with the law laid down by the Supreme Court in the case of Forasol. The learned Chamber Judge cannot be said to have erred in over-ruling the plaintiff's claim that it has reserved right to claim the non rupee tied portion of the loan amount in foreign currency or equivalent Indian Rupees to be calculated at the exchange rate prevalent at the time of payment thereof.

12. The impugned order does not suffer from any legal infirmity. The appeal has no merit and is dismissed with no order as to costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)